

## ARTICLE 16. WEST VIRGINIA SEED LAW

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## Article 16. West Virginia Seed Law

### §19-16-1. Definitions.

(a) "Agricultural seed" includes grass, forage, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn seeds, and combinations of such seeds, and may include noxious weed seeds when the Commissioner determines that such seed is being used as agricultural seed.

(b) "Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

(c) "Brand" means a word, name, symbol, number, design or device, or any combination thereof, identifying the seed of one person and distinguishing it from all others.

(d) "Bulk" means seed when loose in vehicles of transportation or in storage, or in retail displays and not in seed bags or other containers.

(e) "Certifying agency" means (A) an agency authorized under the laws of a State, Territory or Possession to officially certify seed and which has standards and procedures approved by the U. S. Secretary of Agriculture to assure the genetic purity and identity of the seed certified, or (B) an agency of a foreign country determined by the U. S. Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under (A).

**(f) "Coated"** means a seed unit covered with any substance which changes size, shape or weight of original seed. Seeds coated with ingredients, such as, but not limited to, rhizobia, dyes and pesticides, are excluded.

**(g) "Commissioner"** refers to the Commissioner of Agriculture of the state of West Virginia or a duly authorized employee.

**(h) "Complete record"** means any and all information which relates to the origin, treatment, germination, purity, kind and variety of each lot of agricultural seed sold in this state, or which relates to the treatment, germination, kind and variety of each lot of vegetable, or tree and shrub seed sold in this state. Such information shall include seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests and examinations.

**(i) "Conditioning"** means drying, cleaning, scarifying, and other operations which may change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

**(j) "Dealer"** means any person who sells, exposes for sale, offers for sale, exchanges or barter seed for sowing purposes within this state to the ultimate consumer exclusively.

**(k) "Distribute"** means to offer for sale, sell, expose for sale, exchange, or barter seed for sowing purposes within the state.

**(l) "Distributor"** means any person who sells, exposes for sale, offers for sale, exchanges, barter, gives, parcels out, allots, shares, or dispenses a seed for sowing purposes within the state.

**(m) "Dormant"** means viable seed, excluding hard seed, which fail to germinate when provided the specified germination conditions for the kind of seed in question.

**(n) "Genuine growers declaration"** means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment and to whom the shipment was made.

**(o) "Germination"** means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

**(p) "Hard seeds"** means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

**(q) "Hybrid"** means the first generation seed of a cross produced by controlling the pollination and by combining (1) two or more inbred lines; (2) one inbred or a single cross with an open pollinated variety; or (3) two varieties or species, except open-pollinated varieties of corn (*Zea mays*). The second generation of subsequent generations from such crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

**(r) "Inert matter"** means all matter not seed, which includes but is not limited to broken seeds, sterile florets, chaff, fungus bodies and stones as determined by methods defined by rule.

**(s) "Kind" means one or more related species or sub-species which singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.**

**(t) "Label" means a display of written, printed, or graphic matter affixed to the container or package in which seed is distributed; or affixed to the invoice, delivery slip, or other shipping document which accompanies bulk lots of seed. All such labels shall be legible and in English.**

**(u) "Labeling" means all written, printed, or graphic matter, or advertisement referencing such seed.**

**(v) "Lot" means a definite quantity of seed identified by a lot number, code number, or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear on the label.**

**(w) "Mixture", "mix", or "mixed" means seed consisting of more than one kind, each in excess of five percent by weight of the whole.**

**(x) "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds and the prevention of erosion.**

**(y) Noxious weed seeds are divided into two classes: "Prohibited Noxious Weed Seeds" and "Restricted Noxious Weed Seeds" as defined in (1) and (2) of this subsection:**

**(1) The term "prohibited noxious weed seeds" are those weed seeds which are prohibited from being present in agricultural, vegetable, tree or shrub seed. They are the seeds of weeds which are highly destructive and difficult to control by good cultural practices and the use of herbicides;**

**(2) The term "restricted noxious weed seeds or undesirable grass seed" are those weed seeds which are objectionable in agricultural crops, lawns, and gardens of this state and which can be controlled by good cultural practices or the use of herbicides;**

**(z) "Off type" means any seed or plant not a part of the variety in that it deviates in one or more characteristics from the variety as described and may include: a seed or plant of another variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination by another kind or variety; a seed or plant resulting from uncontrolled self pollination during production of hybrid seed; or segregates from any of the above.**

**(aa) "Official sample" means any sample of seed taken by the Commissioner in accordance with the provisions of this article and rules promulgated thereunder.**

**(bb) "Origin" for an indigenous stand of trees means the area on which the trees are growing; for a non-indigenous stand, it is the place from which the seeds or plants were originally introduced.**

**(cc) "Other crop seed" means seed of plants grown as crops (other than the kind or variety included in the pure seed) as determined by methods defined by rule.**

**(dd) "Person" means an individual, partnership, corporation, company, association, receiver, trustee, agent, fiduciary, firm or any group of organized persons whether incorporated or not.**

**(ee) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.**

**(ff) "Registrant" means any person who registers as a seedsman in order to distribute seed for sowing purposes within the state.**

**(gg) "Seed potato" shall refer to the Irish potato (*Solanum tuberosum*) which must grade equal to or better than the minimum requirements of U.S. No. 1, from the standpoint of physical defects, size or disease, and must be certified by an official certifying agency.**

**(hh) "Seizure" means a legal process carried out by court order against a definite amount of seed.**

**(ii) "Stop sale or Embargo" means an administrative order provided by this article, restraining the sale, use, disposition, and movement of a definite amount of seed.**

**(jj) "Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made.**

**(kk) "Tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree and shrub seeds in this State.**

**(ll) "Tree seed collector's declaration" means a statement signed by a grower or person having knowledge of the place of collection giving, for a lot of seed, the lot number, common or scientific name of the species (and subspecies, if appropriate), origin, elevation, and quantity of tree and shrub seed.**

**(mm) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.**

**(nn) "Variant" means any seed or plant which (A) is distinct within the variety but occurs naturally in the variety, (B) is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted, and (C) was originally a part of the variety as released. A variant is not an off-type.**

**(oo) "Variety" means a subdivision of a kind which is distinct, uniform, and stable.**

**(1) "Distinct" means that the variety can be differentiated by one or more identifiable morphological, physiological or other characteristics from all other varieties of public knowledge.**

**(2) "Uniform" means that the variations in essential and distinctive characteristics are describable.**

**(3) "Stable" means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.**

(pp) "Vegetable seeds" includes the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

(qq) "Weed seed" means the seeds of all plants generally recognized as weeds within this state, as determined by methods defined by rule, and includes the categories of prohibited noxious weed seeds and restricted noxious weed seeds.

**§19-16-2. Label requirements for agricultural, vegetable, tree and shrub seeds, and seed potatoes.**

Each container of agricultural or vegetable seeds which is distributed or transported within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language.

(a) For all treated agricultural and vegetable seeds (for which a separate label may be used):

(1) A word or statement indicating that the seed has been treated.

(2) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used.

(3) A caution statement, such as "Do not use for food, feed, or oil purposes," if the substance in the amount present with the seed is harmful to human or other vertebrate animals. The caution for toxic substances shall be a poison statement and/or symbol.

(4) The date beyond which the inoculant is not to be considered effective (date of expiration), if the seed is treated with an inoculant.

(b) For agricultural seeds, except for grass seed mixtures, seed sold on a pure live seed basis or for hybrids which contain less than 95% hybrid seed:

(1) The commonly accepted name of the kind and variety for each agricultural seed component present in excess of five percent of the whole and the percentage by weight of each in order of its predominance: Provided, that if the variety of those kinds generally labeled as to variety is not stated, the label shall show the name of the kind and the words, "Variety Not Stated." Hybrids shall be labeled as hybrids.

(2) Lot number or other lot identification.

(3) Origin (state or foreign country), if known, of alfalfa, red clover and field corn (except hybrid corn). If the origin is unknown, the fact shall be stated.

(4) Percentage by weight of all weed seeds.

(5) The name and rate of occurrence per pound or ounce of each kind of restricted noxious weed seed or undesirable grass seed present. The name and approximate number of each kind of noxious weed seed: (a) Per ounce in *Agrostis* spp., *Poa* spp., Rhodes grass, Bermuda grass, timothy, orchard grass, fescues, alsike and white clover, reed, canary grass, Dallas grass, ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, crimson clover, *Brassica* spp., flax, *Agropyron* spp., and other agricultural seeds of similar size and weight, or mixtures within this group. (b) Per pound in Proso,

sudan grass, wheat, oats, rye, barley, buckwheat, sorghums, vetches and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group.

(6) Percentage by weight of agricultural seeds (which may be designated as "crop seeds") other than those required to be named on the label.

(7) Percentage by weight of inert matter.

(8) For each named agricultural seed:

- (a) Percentage of germination, exclusive of hard seed,
- (b) Percentage of hard seed, if present,
- (c) Following (A) and (B) the "total germination and hard seed" may be stated as such, if desired.
- (d) The calendar month and year the test was completed to determine such percentages

(9) Name and address of the person who labeled said seed, or who distributes said seed within this state.

(c) For grass seed mixtures for lawn or turf purposes.

(1) The word "mixed" or "mixture" shall be stated with the name of the mixture.

(2) The heading "Pure Seed" and "Germination" or "Germ" shall be used in the proper places.

(3) Commonly accepted name of kind or kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form.

(4) Percentage by weight of agricultural seed other than those required to be named on the label (which shall be designated as "crop seed").

(5) The percentage by weight of inert matter not to exceed ten (10) percent by weight. Except for coating material, fertilizer and mulch as provided by Section 3(d), foreign material not common to grass seed shall not be added.

(6) Percentage by weight of all weed seeds. Maximum weed seed content not to exceed one-half of one percent (0.50%) by weight.

(7) Noxious weed seeds that are required to be labeled by rule will be listed under the heading "Noxious Weed Seeds."

(8) For each agricultural seed named under (3) above:

- (a) Percentage of germination, exclusive of hard seed;
- (b) Percentage of hard seed, if present;
- (c) Calendar month and year the test was completed to determine such percentages. The most recent available chronological test date shall be used.
- (d) When only one test date is listed for the entire mixture, the listed test date shall be the oldest chronological test date of the components.

**(9) Name and address of the person who labeled said seed, or who distributes said seed within the state.**

**(d) For agricultural seeds that are coated.**

**(1) Percentage by weight of pure seeds with coating material removed.**

**(2) Percentage by weight of coating material.**

**(3) Percentage by weight of inert material exclusive of coating material.**

**(4) Percentage of germination is to be determined on 400 pellets with or without seeds.**

**(e) For vegetable seeds in packets as prepared for use in home gardens or household plantings; or in preplanted containers, mats, tapes, or other planting devices:**

**(1) Name of kind and variety of seed.**

**(2) Lot number or other lot identification.**

**(3) The year for which the seed was packed for sale as "Packed for \_\_\_\_\_" or the percentage germination and the calendar month and year the test was completed to determine such percentage.**

**(4) Name and address of the person who labeled said seed or who distributes said seed for sale within this state.**

**(5) For seeds which germinate less than the standard as established by rule promulgated under this article:**

**(a) Percentage of germination, exclusive of hard seed;**

**(b) Percentage of hard seed, if present;**

**(c) The words "Germination Below Standard" in not less than 8-point type.**

**(6) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to include the minimum number of seeds in the container.**

**(f) For vegetable seeds in containers other than packets prepared for use in home gardens or household plantings and other than preplanted containers, mats, tapes, or other planting devices.**

**(1) The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance.**

**(2) Lot number or other lot identification.**

**(3) For each named vegetable seed:**

**(a) Percentage germination exclusive of hard seed;**

**(b) Percentage of hard seed, if present,**

(c) Following (a) and (b) the "total germination and hard seed" may be stated as such, if desired,

(d) The calendar month and year the test was completed to determine such percentages.

(4) Name and address of the person who labeled said seed, or who distributes said seed within this state.

(g) For agricultural and vegetable hybrid seed which contain less than 95% hybrid seed:

(1) Kind or variety must be labeled as "hybrid."

(2) The percent which is hybrid shall be labeled parenthetically in direct association following named variety; such as, Comet (85% Hybrid).

(3) Varieties in which the pure seed contain less than 75% hybrid seed shall not be labeled as hybrids.

(h) For agricultural and vegetable seeds, the label may show an expiration date in lieu of:

(1) The calendar month and year of a germination test or pure live seed test,

(2) The year for which the seed was packaged.

(i) For combination mulch, seed and fertilizer products:

(1) The word "combination" followed by the words "mulch - seed - fertilizer (if appropriate)" must appear on the upper 30% of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch - seed - fertilizer" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination." These products shall contain a minimum of 70% mulch.

(2) Agricultural, lawn and turf seeds placed in a germination medium, mat, tape or other device or mixed with mulch shall be labeled as follows:

(a) Product name.

(b) Lot number.

(c) Percentage by weight of pure seed of each kind and variety named which may be less than 5% of the whole.

(d) Percentage by weight of other crop seeds.

(e) Percentage by weight of inert matter which shall not be less than 70%.

(f) Percentage by weight of weed seeds.

(g) Name and number of noxious weed seeds per pound or ounce, if present.

(h) Percentage of germination (and hard seed if appropriate) of each kind or kind and variety named and date of test.

(i) Name and address of the person who labeled said seed, or who distributes said seed within this state.

(j) The labeling requirements for agricultural, and vegetable seeds shall be deemed to have been met if the seed is weighed from a properly labeled bulk container in the presence of the purchaser.



**(k) Once a dealer has broken the seal on a container of seed for any reason, the dealer becomes fully responsible for it's contents including the guarantees for purity, germination rate, etc. and anything else pertaining to the integrity of the opened seed container.**

**(2) Label requirements for tree and shrub seeds.**

**Each container of tree and shrub seed which is distributed or transported within this state for sowing purposes shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, giving the following information, which statement shall not be modified or denied in the labeling or on another label attached to the container -- except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to said invoice if each bag or other container is clearly identified by a lot number stenciled on the container, or if the seed is in bulk. Each bag or container that is not so identified must carry complete labeling.**

**(a) For all treated tree and shrub seeds as defined in this article (for which a separate label may be used):**

**(1) A word or statement indicating that the seed has been treated.**

**(2) The commonly accepted coined, chemical or abbreviated chemical (generic) name of the applied substance or description of the process used.**

**(3) A caution statement, such as "Do not use for food, feed or oil purposes," if the substance in the amount present with the seed may be harmful to human or other vertebrate animals. The caution for mercurials and similarly toxic substances shall be a poison statement and symbol.**

**(4) The date beyond which the inoculant is not to be considered effective (date of expiration), if the seed has been treated with an inoculant.**

**(b) For all tree and shrub seeds subject to the article:**

**(1) Common name of the species of seed (and subspecies, if appropriate).**

**(2) The scientific name of the genus and species (and subspecies, if appropriate).**

**(3) Lot number or other lot identification.**

**(4) Origin**

**(a) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county.**

**(b) For seed collected from other than a predominantly indigenous stand, identify the area of collection and the origin of the stand or state "Origin not Indigenous."**

**(5) The elevation or the upper and lower limits of elevations within which said seed was collected.**

**(6) Purity as a percentage of pure seed by weight.**

**(7) For those species for which standard germination testing procedures are prescribed by the Commissioner, the following:**

**(a) Percentage germination exclusive of hard seed.**

**(b) Percentage of hard seed, if present.**

**(c) The calendar month and year test was completed to determine such percentages.**

**(8) In lieu of 7a, b and c above, the seed may be labeled "Test is in process, results will be supplied upon request."**

**(9) For those species for which standard germination testing procedures have not been prescribed by the Commissioner, the calendar year in which the seed was collected.**

**(10) The name and address of the person who labeled said seed or who distributes said seed within this State.**

**(3) Label Requirements for Seed Potatoes**

**(a) The following information must appear on each label attached to a bag or container of certified seed potato:**

**(1) Name of the person or agency certifying such seed potato;**

**(2) Name of the official state or governmental agency making the inspection upon which the certification is made.**

**(3) Name and address or identification number of the grower of such seed potatoes.**

**§19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.**

**(a) No person shall distribute any agricultural, vegetable, tree and shrub seeds or seed potatoes without a valid Certificate of Registration issued by the Commissioner. Application forms shall be provided by the Commissioner and the application fee will be set forth by regulations. Each Certificate of Registration shall expire on the thirty-first day of December following the next date of issue.**

**(1) A dealer shall not be required to register, if he can prove that the person he is obtaining the seed from has a valid certificate of registration.**

**(b) A person must apply for a certificate of registration at least fifteen days prior to the expiration of the current registration; or at least fifteen days prior to the date that the person intends to engage in business in this state. Each application shall be accompanied by the fee established in this section. A penalty of two dollars shall be added to the fee for each registration that is not applied for or renewed within the time limit.**

**(c) Certificates of registration shall not be transferable with respect to persons or locations.**

(d) The Commissioner may refuse to grant, or may suspend or revoke a certificate of registration when it is determined that the applicant or registrant has violated the provisions of this article or any official rule promulgated hereunder; or this article or the rules promulgated hereunder cannot be or will not be complied with, Provided, that the applicant or registrant shall have the opportunity to be heard prior to the denial of the application or suspension or revocation of the registration.

(e) Each person who holds a valid Certificate of Registration shall report to the Commissioner the net pounds or kilograms of seeds distributed and sold by kind or variety, except for seed potatoes, on a semi-annual basis. Each report shall be filed under oath and due before the thirty-first day of January and July of each year for the preceding six-month period. Payment shall be made according to the fee schedule for agriculture, vegetable, tree and shrub seeds as set by regulations.

(f) Persons distributing vegetable seeds packaged in containers of eight ounces or 226.8 grams or less and sold from display units are exempt from reporting poundage and paying a poundage fee; Provided, that a seed stamp be purchased from the Commissioner, at the rate set by regulations, and placed in a conspicuous place on each display unit.

(g) Persons first distributing seed potatoes into West Virginia trade channels shall report to the Commissioner the net pounds or kilograms of seed potatoes distributed during the first six months of the year. The report and appropriate fee is due by July 31 as set by regulations.

(h) All persons must keep accurate records, as may be necessary or required by the Commissioner, to indicate the pounds of agricultural, vegetable, or tree and shrub seeds or seed potatoes distributed in this state.

(i) All fees and penalties collected under the provisions of this article shall be deposited with the state treasurer in a special revenue account. Such moneys shall be expended by the Commissioner of Agriculture for inspection, sampling, analysis, and other expenses necessary for the administration of this article.

#### **§19-16-4. Prohibitions.**

(a) It shall be unlawful for any person to distribute or transport for sale any agricultural, vegetable, tree and shrub seeds or seed potatoes within this state:

(1) Unless the test to determine the percentage of germination required by Sections 3 and 4 of this article shall have been completed within the test period prescribed in rules promulgated by this article; except that,

(a) Seed potatoes are exempted from germination testing.

(2) Not labeled in accordance with the provisions of this article or which has false or misleading labeling.

(3) Which has been the subject of false or misleading advertisement.

(4) Consisting of or containing prohibited noxious weed seeds, subject to tolerances and methods of determination as prescribed by rule promulgated under this article.

**(5) Consisting of or containing restricted noxious weed seeds per pound or ounce in excess of the number prescribed by rules promulgated under this article, or in excess of the number declared on the label attached to the container of the seed or associated with seed.**

**(6) Containing more than 2-1/2 percent by weight of all weed seeds.**

**(7) If any labeling, advertising or other representation subject to this article represents the seed to be certified seed or any class thereof unless:**

**(a) It has been determined by a seed certifying agency that such seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety, and also that tree seed was found to be of the origin and elevation claimed, in compliance with the rules and regulations of such agency pertaining to such seed; and**

**(b) That the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate) or variety.**

**(8) Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a U. S. certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed; Provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.**

**(b) It shall be unlawful for any person within this state:**

**(1) To detach, alter, deface, or destroy any label provided for in this article or the rules promulgated by this article, or to alter or substitute seed in a manner that may defeat the purpose of this article.**

**(2) To disseminate any false or misleading advertisement concerning seeds subject to this article in any manner or by any means.**

**(3) To interfere with the Commissioner's official duties.**

**(4) To fail to comply with a "stop sale or embargo" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale or embargo" order or tags attached thereto, unless released by the Commissioner, and for the purpose specified thereby.**

**(5) To use the word "trace" as a substitute for any statement which is required.**

**(6) To use the word "type" in any labeling in connection with the name of any agricultural seed variety.**

**(7) To distribute or knowingly use any agricultural, vegetable or tree and shrub seed that is misbranded.**

**(8) To misbrand any agricultural, vegetable, or tree and shrub seed or seed potato.**

**(a) An agricultural, vegetable, tree or shrub seed or seed potato is misbranded:**

**(1) If its label or labeling is false or misleading.**

**(2) If it is not labeled as required by this article.**

**(3) If any word, statement, or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use;**

**(4) If any damage or inferiority has been concealed.**

**(9) To distribute or knowingly use any agricultural, vegetable, or tree and shrub seed or seed potato that has not had an accurate statement of poundage reported to the Commissioner in the previous reporting period.**

**(10) To use or imply the name West Virginia Department of Agriculture, or reference any inspection or sample findings made by the West Virginia Department of Agriculture on labels or labeling of agricultural, vegetable, or tree and shrub seed or seed potatoes.**

**(11) To falsify any laboratory reports regarding seed distributed within this state.**

#### **§19-16-5. Exemptions.**

**(a) The provisions of sections 2 and 3 §19-16-2 and §19-16-3; §19-16-4; and §19-16-8 shall not apply:**

**(1) To seed or grain not intended for sowing purposes.**

**(2) To seed in storage, or seed being transported or consigned to a cleaning or processing establishment for cleaning or processing; Provided, that the invoice, label or labeling accompanying any shipment of said seed bears the statement "seeds for processing"; and Provided that any label or labeling or other representation which may be made with respect to the uncleaned or unprocessed seed shall be subject to this article.**

**(3) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier; Provided, that such carrier is not engaged in producing, processing, or marketing seeds subject to the provisions of this article.**

**(b) No person shall be subject to the penalties of this article for having sold or offered for sale seeds subject to provisions of this article which were incorrectly labeled or represented as to kind, species (and subspecies, if appropriate), variety, type, or origin, elevation, and year of collection (if required), which seeds cannot be identified by examination thereof, unless he has failed to obtain an invoice, genuine grower's or tree seed collector's declaration or other labeling information and to take such other precautions as may be reasonable to insure the identity to be that stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.**

**(c) The provisions of Sections 2 and 3 do not apply to tree seed produced by the consumer.**

#### **§19-16-6. Duties and Authority of Commissioner of Agriculture**

**The Commissioner has the power and authority to:**

- (a) Establish by legislative rule germination standards for agricultural, forest, vegetable seeds.**
- (b) Enter and inspect, during reasonable hours, any location where agricultural, vegetable, tree and shrub seeds or seed potatoes for sowing purposes are manufactured, distributed, transported or used, and where records relating to the manufacture, distribution, shipment, labeling or sale of seed are kept. Such inspection includes, but is not limited to, examining, photographing, verifying, copying and auditing records as is necessary to determine compliance with this article, labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing and sale of agricultural, vegetable, tree and shrub seeds or seed potatoes.**
- (c) Open, examine, sample and test agricultural, vegetable, or tree and shrub seeds or seed potatoes, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of seeds used for sowing purposes.**
- (d) Issue certificates of registration pursuant to this article.**
- (e) Refuse applications for registration; or suspend or revoke registrations as provided in this article.**
- (f) Issue "stop sale or embargo" orders as provided in this article.**
- (g) Condemn and confiscate any agricultural, vegetable, or tree and shrub seed or seed potato that is not brought into compliance with this article.**
- (h) Collect fees and penalties, and expend moneys under the terms of this article.**
- (i) Sampling in accordance with the official methods as established by The Association of Analytical Chemists, The Association of American Seed Control Officials, The United States Department of Agriculture or The Association of Official Seed Analysts.**
- (j) Conduct hearings as provided by this article.**
- (k) Assess civil penalties and refer violations to a court of competent jurisdiction.**
- (l) Obtain court orders directing any person refusing to submit to inspection, sampling and auditing to submit.**
- (m) Establish and maintain seed testing facilities; establish reasonable fees for such tests; incur expenses; and conduct tests in accordance with the Association of Official Seed Analysts.**
- (n) Be guided by the analytical results of the official sample when determining whether the agricultural, vegetable, or tree and shrub seed is deficient in any component.**
- (o) Report the analytical results on all official deficient samples to the registrant, dealer, purchaser if known, and or seedsman/distributor.**
- (p) Upon request made within thirty days from the date the official sample results are reported, furnish a portion of the official sample to the registrant.**

**(q) Publish and distribute annually a composite report containing: (1) the sales of agricultural, vegetable, tree and shrub seeds and seed potatoes during the preceding period; (2) the results of analysis of official samples as compared with the guarantee on the label; (3) firms responsible for the product; and (4) such other data the Commissioner deems necessary: Provided, that the information on production and use so provided does not disclose the operations of any person.**

**(r) To cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this article.**

**(s) Promulgate rules, in accordance with chapter twenty-nine-a of this code.**

**(t) Promulgate emergency rules 90 days within passage of this bill into law.**

**§19-16-7. Stop Sale Orders or Embargo; Seizure.**

**(a) Stop sale orders: When the Commissioner has reasonable cause to believe any lot of seed or seed potato is being distributed or used in this state in violations of the provisions of this article or any rule promulgated hereunder, then he or she may issue and enforce a written stop sale order, warning the custodian of the seed not to distribute, use, remove or dispose of the seed in any manner until the stop sale order is released by the Commissioner or by court order.**

**(1) When the stop sale or embargo order is issued, the Commissioner shall affix a tag or other marking to the seed warning that such seed is under a stop sale order and notify the custodian that he or she has a right to request an immediate hearing.**

**(2) The Commissioner shall release the stop sale or embargo order when said seed has been brought into compliance with this article and its rules.**

**(3) The Commissioner shall have the authority to issue a stop sale or embargo order against a perishable product, even if the result is the involuntary disposal of the product.**

**(4) The Commissioner may take action to seize any seed not brought into compliance with this article and the rules issued hereunder, within ninety days of the notice to the custodian.**

**(b) Seizure: Any lot of seed or seed potato not in compliance with the provisions of this article shall be subject to seizure on complaint of the Commissioner to a court of competent jurisdiction in the locality in which the seed or seed potato is located. In the event the court finds the seed to be in violation of this article and orders the condemnation of said seed or seed potato, it shall be denatured, processed, destroyed, relabeled, or otherwise disposed of in compliance with the laws of this state: Provided, that in no instance shall the court order such disposition of said seed without first having given the claimant an opportunity to apply to the court for the release of said seed or seed potato or permission to process or relabel it into compliance with this article.**

**§19-16-8. Penalties and prosecutions.**

**(a) Criminal penalties. Any person violating any of the provisions of this article is guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than one hundred**

dollars nor more than five hundred dollars for the first offense, and for each subsequent offense, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not more than six months, or both fined and imprisoned. Magistrates have concurrent jurisdiction with circuit courts to enforce the provisions of this article.

**(b) Civil penalties.**

(1) Any person violating any of the provisions of this article or the rules adopted hereunder may be assessed a civil penalty by the Commissioner. In determining the amount of any civil penalty, the Commissioner shall give due consideration to the history of previous violations of any person; the seriousness of the violation, including any irreparable harm to the environment, and the demonstrated good faith of any person charged in attempting to achieve compliance with this article after written notification of the violation.

(2) The Commissioner may assess a penalty of not more than five hundred dollars for the first offense or nonserious violation, as determined by the Commissioner in accordance with the rules promulgated in accordance with the provisions of chapter twenty-nine-a of this code, and not more than one thousand dollars for a serious, repeat, or intentional violation, as determined by the Commissioner in accordance with such promulgated rules.

(3) The civil penalty is payable to the state of West Virginia and is collectible in any manner now or hereafter provided for collection of a debt. Any person liable to pay the civil penalty and neglecting or refusing to pay the same, shall be assessed interest at ten percent per annum from the date the penalty was assessed. Such penalty and interest constitute a lien in favor of the state of West Virginia and shall attach on the person's property when such lien is properly recorded in the county where such property is located. There shall be no cost as a condition precedent to recording.

(c) Notwithstanding any other provision of law to the contrary, the Commissioner may promulgate and adopt rules which permit consent agreements or negotiated settlements for the civil penalties assessed as a result of a violation of the provisions of this article.

(d) It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(e) Nothing in this article shall be construed as to require the Commissioner to report minor violations of this article when he/she believes that the public interest will be best served by a written notice.

(f) No state court may allow the recovery of damages for administrative action taken if the court finds that there was probable cause for such action.

**§19-16-9. Provisions of article separable.**

If any provision of this article is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the article and the applicability thereof to other persons and circumstances shall not be affected thereby.